

**State of Rhode Island and Providence Plantations  
OFFICE OF THE HEALTH INSURANCE COMMISSIONER  
1511 Pontiac Avenue, Bldg 69-1  
Cranston, RI 02920**

**NOTICE OF ADOPTION OF  
OFFICE OF THE HEALTH INSURANCE COMMISSIONER REGULATION 10**

Notice is hereby given in accordance with R.I. Gen. Laws §§ 42-14-17 and 42-35-3, that the Office of the Health Insurance Commissioner (OHIC) proposes to adopt the following regulation:

**Office of the Health Insurance Commissioner Regulation 10  
Cafeteria Plans**

This regulation is proposed for adoption to implement the provisions of Title 27, Chapter 70, entitled "The Health Insurance Tax Incentive" (the HITI). The HITI requires each Rhode Island employer that meets a designated size requirement to adopt and maintain for its employees a cafeteria plan, also known as a Section 125 plan.

The proposed regulation and a concise explanatory statement are available for public inspection at [www.ohic.ri.gov](http://www.ohic.ri.gov) or in person at OHIC during regular business hours. OHIC is located at 1511 Pontiac Avenue, Bldg. 69-1, Cranston, Rhode Island 02920. These documents are also available by request. For copies, please email [jcogan@ohic.ri.gov](mailto:jcogan@ohic.ri.gov), call John Aloysius Cogan Jr. at (401) 462-9636, or write to OHIC at the above address and request copies.

Notice is also hereby given in accordance with R.I. Gen. Laws § 42-35-2, that the OHIC will hold a hearing beginning at 11:00 am on April 30, 2009 in the OHIC offices regarding the proposed regulation. All interested parties are invited to submit written or oral comments concerning the proposed regulation by April 30, 2009 to John Aloysius Cogan Jr., OHIC, 1151 Pontiac Avenue, Bldg. 69-1, Cranston, Rhode Island 02920, [jcogan@ohic.ri.gov](mailto:jcogan@ohic.ri.gov).

If you plan to attend the hearing, please enter OHIC from the parking lot adjacent to Building 68, through the entrance to the Department of Business Regulation (DBR). The DBR entrance is located between Buildings 68 and 69. A telephone is available in the lobby to contact someone from OHIC. All persons who wish to give public comment will be heard at this hearing.

The hearing room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling (401) 462-9517 or TDD 711.

Christopher F. Koller  
Health Insurance Commissioner

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**OFFICE OF THE HEALTH INSURANCE COMMISSIONER REGULATION 10**  
**CAFETERIA PLANS**

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***Section 1      Statement of Authority and Purpose***

This regulation is promulgated pursuant to the authority granted to the health insurance commissioner under R.I. Gen. Laws §§ 27-70-1 *et seq.*, 42-14-5, 42-14-17, 42-14.5-1 *et seq.* and 42-35-1 *et seq.*

This regulation is intended to implement the provisions of Title 27, Chapter 70, entitled "The Health Insurance Tax Incentive" (the "HITI"). The HITI requires each Rhode Island employer that meets certain size requirements to adopt and maintain for its employees a cafeteria plan (also referred to as a "Section 125 plan") so that the employees and their dependents may purchase health insurance with pre-tax wages.

Nothing in this regulation should be construed as requiring an employer to establish a group health plan or to pay for, or otherwise contribute to, the cost of any health insurance purchased through the cafeteria plan. Furthermore, nothing in this regulation shall be construed as requiring an employer to establish a cafeteria plan in a manner that would violate any federal law, including The Employee Retirement Income Security Act of 1974 ("ERISA"), the Consolidated Omnibus Budget Reconciliation Act ("COBRA") or The Health Insurance Portability and Accountability Act ("HIPAA").

***Section 2      Definitions***

All words or phrases used in this regulation shall have the following meaning:

- (a) "Cafeteria plan" is a plan that satisfies section 125 of the Internal Revenue Code, 26 U.S.C. § 125, and the regulations promulgated thereunder by the United States Department of the Treasury.
- (b) "Employee" has the meaning set forth in subsection R.I. Gen. Laws § 28-42-3(14).
- (b) "Employer" has the meaning set forth in R.I. Gen. Laws § 28-42-3(15).

- (c) "Commissioner" shall mean the health insurance commissioner.
- (d) "Group health plan" has the same meaning as an employee welfare benefit plan as defined in § 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

***Section 3      Applicability and Scope***

- (a) These regulations apply to employers that meet the following conditions:
  - (1) The employer has an annual average employment of more than twenty-five employees for six consecutive months of the year in the state of Rhode Island;
  - (2) The employer has established a group health plan;
  - (3) The group health plan is not provided on a self-funded or self-insured basis; and
  - (4) The employer's group health plan provides health insurance coverage for which any portion of the premium is deducted from the employee's salary or wages.
- (b) Nothing in this section shall be construed to require an employer to set up or maintain a group health plan or take any action that affects an existing group health plan.
- (c) Nothing in this section shall be construed to prohibit or otherwise restrict an employer's ability to either provide a group health benefit plan or create a premium only cafeteria plan with defined contributions and in which the employee purchases the policy.

***Section 4      Requirements***

- (a) An employer that meets the requirements of Section 3 of this regulation shall, if it has not already done so, adopt and maintain a Section 125 Cafeteria Plan for its employees that participate in the employer's group health plan.
- (b) A Section 125 Cafeteria Plan must satisfy applicable Internal Revenue Code Section 125 requirements, any applicable United States Department of the Treasury rulings, regulations and guidance, as determined by the United States Department of the Treasury and the United States Internal Revenue Service.

***Section 5      Severability***

If any provision of this regulation or the application thereof to any person or circumstances are for any reason held to be invalid, the remainder of the regulation and the application of its provisions to other persons or circumstances shall not be affected thereby.

***Section 16      Effective Date***

This regulation shall become effective as indicated below.

EFFECTIVE DATE: July 1, 2009